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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,076	03/26/2004	Robert Duboc	P146-US	3509
26148	7590	11/30/2005	EXAMINER	
REFLECTIVITY, INC.			LEWIS, MONICA	
350 POTRERO AVENUE			ART UNIT	
SUNNYVALE, CA 94085			PAPER NUMBER	

2822

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/810,076	DUBOC ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Monica Lewis	2822	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2005.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 5-16 and 19-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 17 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/04;4/05</u> | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This office action is in response to the election filed October 20, 2005.

#### ***Election/Restrictions***

2. Applicant's election with traverse of Embodiment I in the reply filed on 10/20/05 is acknowledged. The traversal is on the ground(s) that "the election of species requirement...is not applicable to the present application...claims in species groups I-XV as indicated in the Office Action are not mutually exclusive." This is not found persuasive because a restriction requires an election between distinct inventions, for example, election between combination and subcombination inventions, and the practice relating to an election between independent inventions, for example, and election of species. Applicant has distinct embodiments that were disclosed in the restriction of 9/29/05. Finally, a proper response to a genus/species restriction is the submission of evidence or the identification of such evidence showing the species to be obvious variants or clearly admit on the record that this is the case. Finally, the Examiner inadvertently forgot to include that claim 1 is generic to claims 2-19 and claim 21 is generic to claims 22-39.

The requirement is still deemed proper and is therefore made FINAL.

#### ***Claim Objections***

3. Claims 17 and 18 are objected to because of the following informalities: a) it appears that the ":" is a typographical error. Appropriate correction is required.

***Drawings***

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: a) 114 (See Figure 2); and b) 120 (See Figure 5). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 2822

6. Claims 1, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Robbins et al. (U.S. Publication No. 2002/0063322).

In regards to claim 1, Robbins et al. ("Robbins") discloses the following:

- a) a deflectable element (702) on a substrate (704) (For Example: See Figure 7 and Paragraph 4);
- b) a getter material (708) and/or a lubricant material disposed on the substrate (For Example: See Figure 8); and
- c) a package having the substrate with the deflectable element (For Example: See Figure 8).

In regards to claim 17, Robbins discloses the following:

- a) comprising a getter (For Example: See Paragraph 44).

In regards to claim 18, Robbins discloses the following:

- a) comprising a lubricant (For Example: See Paragraph 36).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robbins et al. (U.S. Publication No. 2002/0063322) in view of Ishii (U.S. Patent No. 6,903,860).

In regards to claim 2, Robbins fails to disclose the following:

- a) the substrate is glass substrate that is transmissive to visible light.

However, Ishii discloses a semiconductor device that has a glass substrate (For Example: See Column 11 Lines 41 and 42). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the semiconductor of Robbins to include a glass substrate that is transmissive to visible light as disclosed in Ishii because it aids in improving the device performance (For Example: See Column 5 Lines 24-52).

Additionally, since Robbins and Ishii are both from the same field of endeavor, the purpose disclosed by Ishii would have been recognized in the pertinent art of Robbins.

In regards to claim 3, Robbins fails to disclose the following:

a) the deflectable element is a mirror plate that is attached to a hinge formed on the substrate such that the mirror plate can rotate on the substrate.

However, Ishii discloses a semiconductor device that has a deflectable element (301) that is a mirror plate that is attached to a hinge (302) formed on the substrate (306) such that the mirror plate can rotate on the substrate (For Example: See Column 7 Lines 60-65). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the semiconductor of Robbins to include a deflectable element that is a mirror plate that is attached to a hinge formed on the substrate such that the mirror plate can rotate on the substrate as disclosed in Ishii because it aids in improving the device performance (For Example: See Column 5 Lines 24-52).

Additionally, since Robbins and Ishii are both from the same field of endeavor, the purpose disclosed by Ishii would have been recognized in the pertinent art of Robbins.

In regards to claim 4, Robbins fails to disclose the following:

a) a semiconductor substrate having thereon an electrode and circuitry for deflecting the deformable element.

However, Ishii discloses a semiconductor device that has a semiconductor substrate (201) having thereon an electrode (204) and circuitry (206 and 207) for deflecting the deformable element (For Example: See Figure 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the semiconductor of Robbins to include a semiconductor substrate having thereon an electrode and circuitry for deflecting the deformable element as disclosed in Ishii because it aids in improving the device performance (For Example: See Column 5 Lines 24-52).

Additionally, since Robbins and Ishii are both from the same field of endeavor, the purpose disclosed by Ishii would have been recognized in the pertinent art of Robbins.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monica Lewis whose telephone number is 571-272-1838. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zandra Smith can be reached on 571-272-2429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for regular and after final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

ML

November 23, 2005

A handwritten signature in black ink, appearing to be 'C. Lee' or similar, written in a cursive style.